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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 142nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 April 1993, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.142/Add.1, and that of the third part (public) of the meeting as document CAT/C/SR.142/Add.2.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of Panama (continued) (CAT/C/17/Add.7)

1. At the invitation of the Chairman, Mr. Saenz Fernandez (Panama) took a place at the Committee table.

2. Mr. SAENZ FERNANDEZ (Panama), replying to questions raised by members of the Committee, said that in general he agreed that there was a need for greater consistency in the statistical information given in his country's reports. That point had been raised by Mr. Sorensen, as had the question of warrants for arrest. Such warrants must be in written form, and legal assistance was available to the person arrested. With regard to pre-trial detention, the authorities of the prison concerned must receive a written detention order. It should be stressed that in Panama the judiciary was independent, and that judges of higher courts were appointed by the Supreme Court, the members of which were appointed by the President of the Republic, subject to a right of veto by the Panamanian Parliament. Members of the judiciary could be removed from office only if dereliction of duty were proved. Administrative procedures were available in the event of such infractions, and members of the judiciary were also amenable to the normal processes of law. If a judge suffered from a mental illness, legislation empowered a medical panel to determine whether the degree of illness was such as to require removal from office. In such cases provision was made for a disability pension.

3. In reply to another question raised by Mr. Sorensen, he said that cases involving mentally-ill persons were assessed by the Institute of Forensic Medicine, which was required to take into account the evidence furnished by the doctor responsible for persons held in pre-trial detention. If the panel so decided, proceedings would be suspended until the person concerned was deemed fit to stand trial. In cases in which the individual had insufficient means to pay for hospital treatment, the State could provide for such treatment in special wards. In the event of chronic illness, and when no treatment was available, the person concerned would be detained under house-arrest, and a relative would be responsible for custody. Again, the Institute of Forensic Medicine would have responsibility for determining whether or not the illness was chronic.

4. With regard to extradition, his Government had indicated in its supplementary report that Panamanian legislation provided that extradition would not be permissible if there was evidence that it might lead to the torture, execution or persecution of the person for whom the extradition order was sought. With regard to paragraph 27 of the report, he wished to add that Panama adhered to the norms established by the Bustamente Code on rights of asylum and the Caracas Convention, and the requesting State was obliged to forward all relevant documentation. If the person concerned was being held in pre-trial detention, documentation must be provided to ensure that the offence with which he was charged was punishable under Panamanian law. If the detainee had already been sentenced, the reasons for the conviction must be

adduced. It should be pointed out that the Bustamente Code stipulated that political persecution must be proven, as must the fact that the person concerned was not trying to evade trial for a criminal offence. In Panama several people had requested asylum, including citizens of El Salvador and Cuba, and their cases were under consideration.

5. Panama had a professional civil police force which was subordinate to the Public Prosecutor's Department; police training was assisted by the United Nations. In 1990, a team of experts had visited Panama to suggest changes in the administration of justice and to provide advice to the police and the Public Prosecutor's Department: that advice had been duly noted, and the national police force had subsequently been reorganized; it was now subordinate to the Ministry of Justice, which was itself responsible to the President.

6. With regard to access to prisons, he said that, in addition to judges and other members of the judiciary who reported to the Government on the legal status of detainees and heard complaints, non-governmental organizations were free, provided they gave prior notice to the institutions concerned, to visit prisons and other establishments in which persons were detained.

7. Panamanian legislation made provision for compensation in the event of civil liability for wrongful arrest. That included compensation for physical or moral injury and compensation for pre-trial detention exceeding a period of one year. If the plaintiff was unable financially to sustain his own case, the State was under an obligation to provide funds for that purpose from the public purse. There were also provisions whereby a defendant could claim against the costs entailed by a false accusation.

8. There had been no cases involving torture since 20 December 1989, but some 15 cases were still pending; it should be pointed out that the amnesty law excluded any cases which involved torture or other offences against human rights.

9. Turning to the questions raised by Mr. Burns, he said that, as of 21 December 1992, there had been no political prisoners in Panama, but since that date a number of persons who had participated in attacks on the duly constituted authorities of the Republic had come before the courts. The four cases involved would be mentioned in his country's next report. As to statistics concerning persons detained in Panama, he was able to confirm that 3,400 persons were currently in prison for administrative or other offences.

10. The definition of torture, as set out in article 1 of the Convention, had been duly incorporated in Panama's domestic legislation in 1987, as had the relevant provision of the Inter-American Convention to Prevent and Punish Torture.

11. As to the rights of persons arrested, Panamanian law provided that the police were entitled to detain a suspect for 24 hours before the rule of habeas corpus applied, and that the State was under an obligation to provide defence counsel if the accused was financially unable to do so.

12. Concerning the question of superior orders, he said that disciplinary measures could be imposed by a supervisory branch within the police force itself in the event of a violation of human rights, but police officers could also be prosecuted for such violations in the criminal courts.

13. In connection with article 7 of the Convention, he said that where no formal agreement existed, as in the case of Costa Rica and the United States, arrangements for mutual cooperation none the less applied with regard to extradition.

14. Remedies available to persons who considered themselves victims of torture within the terms of article 13 of the Convention were entitled both to apply for administrative redress and to initiate proceedings in the courts.

15. The function of the Attorney-General's Office under article 217 of the Constitution was to defend the interests of the State, to ensure compliance with legislation, and to monitor the conduct of public officials. The Attorney-General was authorized to initiate proceedings against any official, at the central or decentralized level.

16. Turning to the question whether Panama was facing problems in implementing the provisions of human rights conventions, he stated that the assistance of the United Nations or other international bodies was not required in that area since Panama's problems were more of an economic nature.

17. With regard to pre-trial detention, it should be noted that there were no cases of persons being held for more than one year and attendant procedures provided for in international instruments were respected.

18. Panama's Constitution contained a full definition of torture and the offence of torture was recognized as a punishable act under Panamanian legislation. Furthermore, the Convention against Torture had been fully integrated in Panamanian law.

19. As to the question whether persons were being or had been held in psychiatric institutions on the grounds of their political opinions, there were no cases in Panama of such violations of human rights. Such institutions did exist but functioned exclusively in the interests of treating persons with mental illnesses. Freedom of political opinion was a fundamental right in Panama.

20. With regard to the minimum rules for the treatment of prisoners, Panama was doing everything possible fully to implement the standards set by the United Nations with regard to prison establishments. Those standards concerned good access to medical services, access to prisoners' families, legal assistance and conditions of detention in general. There had been no cases of torture in prison establishments.

21. The Supreme Court of Justice was concerned with ensuring respect for the Constitution and adherence to the provisions of the international conventions to which Panama was a party. Judicial appointments were decided ultimately by the President of the Republic and then endorsed, or rejected, by Parliament.

22. There were no recorded cases of an administrative decision having been overturned owing to human rights violations, one contributory factor being the existence of a court of appeal. However, thus far it had not been necessary to refer any cases to it.

23. Guarantees were provided to ensure that persons were not subjected to coercion when making statements or making a confession. Persons accused of having committed an offence were entitled to make their statements in the presence of a lawyer and could refuse to answer any leading questions. Furthermore, all interviews were recorded and the accused had the right to appeal if he or his counsel felt that constitutional guarantees had been violated.

24. Non-governmental organizations were entitled to visit places of detention and make recommendations concerning conditions or other aspects of imprisonment. Under article 22 of the Panamanian Constitution, any such recommendations must be transmitted to the relevant authorities.

25. With regard to raising awareness of human rights issues in schools and other educational establishments, relevant courses were included in curricula and covered all aspects of human rights, including international instruments, legal recourse and legislation.

26. On the issue of decriminalization and recourse to forms of punishment other than imprisonment, Panama was attempting to find alternatives, including suspended sentences and fines. Such measures were favoured when dealing with offenders charged with crimes customarily punishable by three years' imprisonment or less, since expert opinion indicated that rehabilitation within prison establishments for such short periods was not possible. The results of the experiment with alternative forms of detention had been positive and a failure rate (recidivism) of only 1 per cent had been noted. Courts were increasingly likely to hand down suspended sentences particularly in cases where the prisoner was suffering from a serious illness or was a pregnant woman.

27. With regard to torture and human rights violations, specific chapters were devoted to those questions in the Penal Code (arts. 160, 165, 301).

28. It had been observed that article 34 of the Constitution and Act No. 16 of 1991 seemed to be contradictory. The problem was possibly due to a syntactical misunderstanding. Article 34 covered public officials and members of the police or armed forces, who were absolved of responsibility for a violation of the Constitution or other law on the grounds of due obedience to orders from a superior. Act No. 16 referred only to the Attorney-General's Office and its investigative officers.

29. The ethical and moral aspects of legal processes were safeguarded by a legal council, which also monitored judges to ensure they were fair and honest in their decisions, handed down sentences appropriate to the offence and did not compromise the administration of justice. The Constitution upheld the right of every person to submit complaints to a judicial council if standards had not been maintained.

30. In reply to the question asked by Mr. Voyame, the Assembly could not derogate from Act No. 5 of 1987, which stated that the Convention against Torture had been duly approved; derogations were admissible only if the Convention itself was denounced.

31. As to the question concerning compensation by the State, when a person had been tried and found not guilty, after having been held in pre-trial detention for up to one year, compensation was payable under article 169 of the Penal Code. However, it should be noted that it had never proved necessary to invoke that procedure.

32. With regard to rehabilitation, Panama set great store by the principles of security and social defence. Technical and medical services were provided under the social security system, and included therapy for persons suffering from a mental disorder.

33. The CHAIRMAN commended the representative of Panama for his detailed replies.

34. Mr. GIL LAVEDRA said he still believed that article 34 of the Constitution conflicted with article 2, paragraph 3, of the Convention and requested clarification.

35. Mr. SORENSEN said that he had been impressed by the detailed replies provided but would welcome further information, preferably in writing, on training and education given to health personnel.

36. Mr. SAENZ FERNANDEZ (Panama) said that article 34 of the Constitution did not exempt a person from liability for a manifest violation of a constitutional or legal provision to the detriment of another person on the grounds that he had acted under orders from a superior. However, it excepted police officers on duty, in which case responsibility fell solely on the superior officer who had given the order. However, if a civilian committed an offence or if a police officer did so of his own volition, he ultimately bore responsibility for his own actions.

37. No exceptional circumstances whatsoever, whether a state of war or internal unrest, could be invoked as justification of torture. There seemed to be no contradiction with article 2, paragraph 3, of the Convention, which stated that an order from a superior officer or a public authority could not be invoked as a justification of torture.

38. With regard to the question on education, compulsory training programmes were organized for doctors, lawyers and diplomats, to ensure that persons in responsible posts were fully aware of all aspects of human rights issues.

39. The CHAIRMAN thanked the respresentative of Panama for his replies to the questions put by the Committee.

40. Mr. Saenz Fernandez (Panama) withdrew.

The first part of the public meeting rose at 4.35 p.m.